

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 871 of 1985

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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PRAKASHCHANDRA GOKULDAS THAKKAR

Versus

RAVJIBHAI CHHAGANBHAI KHOJA  
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Appearance:

MR BD KARIA for Petitioners  
MR SN SHELAT for Respondent No. 1, 2  
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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 05/07/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the petitioners plaintiffs-landlords, who had sued the respondent defendant-tenant for a decree of eviction under the provisions of the Bombay Rent Act on the ground that the

tenant was in arrears of rent of more than six months and had neglected or omitted to pay the same within 30 days of the statutory notice, that the first defendant-tenant was guilty of illegal subletting in favour of the second defendant, and that the tenant was guilty of erecting a permanent structure upon the leased premises without the written consent of the landlord.

2. The trial court, after appreciating the evidentiary material on record, passed a decree in favour of the landlord on all the three grounds, by holding that the tenant (first defendant) was in arrears of rent of more than six months and had neglected or omitted to pay the same within 30 days of the statutory notice, that the tenant-first defendant was guilty of illegal subletting to the second defendant, and was also guilty of erecting a permanent structure upon the leased premises without the written consent of the landlord.

3. Being aggrieved by this judgement and decree of the trial court, the tenant preferred an appeal under section 29(1) of the Bombay Rent Act. The lower appellate court, after reappreciating the evidentiary material on record, reversed the finding of the trial court as regards the tenant having erected a permanent structure upon the suit premises.

4. The other two aspects before the lower appellate court viz. whether the tenant was in arrears of rent for more than six months, and whether the first defendant-tenant was guilty of illegal subletting in favour of second defendant, are questions necessarily required to be dealt with together in view of the particular facts of the case.

5. The lower appellate court found that the second defendant is the real brother (brother by full blood) of the first defendant-tenant. The lower appellate court found that although the rent receipts were issued in the name of the first defendant, the property was leased out to the joint family business in the name of M/s Ravjibhai Chhaganbhai and Company, which was a business run by defendant no.1, defendant no.2 and their other two brothers. The lower appellate court, therefore, found that since the first defendant was the eldest brother, the rent receipts would naturally be issued in his name, but that would not necessarily establish that the first defendant was the sole tenant in his individual capacity. In the context of the evidence on record the lower appellate court found that there is no evidence whatsoever to indicate, whether by way of a rent note or

otherwise, in whose name the tenancy was originally created. Thus, on the totality of the evidence on record, the lower appellate court came to the conclusion that the property was rented out to the four brothers for running their family business in the name of Ravjibhai Chhaganbhai and Company.

6. In this context, therefore, when the second defendant had sent a money order to the landlords responding to the landlords' demand for arrears of rent, the landlords were not justified in refusing the same on the ground that the remission of the amount was by a person other than the tenant. The lower appellate court, therefore, found that since the landlords' demand for arrears of rent was met by remission of the necessary amount made by one of the co-tenants, it cannot be said that the tenant was not ready and willing to pay the rent. Under the circumstances the lower appellate court found that the landlord would not be entitled to a decree for eviction on the ground of arrears of rent. The lower appellate court, therefore, set aside the judgement and decree of eviction passed by the trial court by allowing the appeal.

7. Hence the present revision at the instance of the landlord challenging the judgement and decree of the lower appellate court.

8. For the purpose of the present revision only a few salient features require to be noted. The prime question is as to whether the first defendant alone, and in his capacity as an individual, was the tenant, or whether the tenancy was joint tenancy in favour of all the brothers for the purpose of running the family business.

9. There does not appear to be any controversy on the fact that the property in question was previously owned by one Bhaktidas Gandabhai. This previous owner was the uncle of the plaintiff no.2. On the death of the said Bhaktidas, the property came to be owned by his widow and the present plaintiff no.1. It is established by the cross-examination of plaintiff no.2 himself that the tenancy in respect of the property was created by the said Bhaktidas (the late uncle of the plaintiff no.2). It is also an admitted position that there is no written rent note. Under these circumstances, other facts and circumstantial evidence have to be relied upon for the purpose of establishing whether the first defendant was the sole tenant in his individual capacity and whether all the four brothers, for running the family business,

were co-tenants.

10. It is also an admitted position that except for the rent receipts, there is no documentary evidence to indicate as to who are the tenants. However, it is established on record that although the rent receipts are in the name of defendant no.1, some time in the year 1955 and for quite some time thereafter, defendant no.2 has been shown to be a tenant in his own right. Once again thereafter from 1st June 1957 the rent receipts have been issued in the name of the first defendant.

11. The lower appellate court has rightly noted that in the cross-examination of plaintiff no.2, a large number of receipts have been shown to him, wherein there is a clear reference to the fact that although the rent has been paid in the name of the first defendant, the same has been paid by the second defendant or the other two brothers, for and on behalf of the first defendant.

12. The above situation has to be seen in juxtaposition with the deposition of the plaintiffs' own witness Bhagwandas Dhanjibhai (Exh.75). This witness stated that he was formerly a tenant in the said premises and after he vacated the same, the same was rented out to defendant no.2 and defendant no.1 along with their two other brothers. This witness clearly asserted that all the four brothers were together and were doing joint business. Even by way of a re-examination it has been brought out that the defendants were carrying on the business in the name and style of Ravjibhai Chhaganbhai and Company.

13. The lower appellate court was, therefore, justified in concluding that the four brothers were carrying on a joint business and for this purpose had taken the premises on lease from its previous owner viz. Bhaktidas, and since the first defendant was the eldest brother, most of the receipts were being issued in his name, though some receipts were in the name of the second defendant.

14. The lower appellate court was justified in negating the approach of the trial court that since the family members of the defendants are Khoja, there can be no assumption about their joint status. The question of joint status whether in a Khoja family or a Hindu family is an irrelevant consideration so far as the facts of the present case are concerned. The evidence clearly indicates that the four brothers were doing a joint business and it was for this purpose that the property

was taken on lease. It matters little whether they were doing joint business, or whether they were members of a joint family or otherwise. Obviously, therefore, the lower appellate court was justified in observing that the personal law of the parties has no relevance to the facts of the case.

15. Once it is established as held by the lower appellate court that the premises were taken on rent by the four brothers for the purpose of running a joint business, and the rent receipts were mostly issued in the name of the first defendant only by way of convenience, it goes without saying that the refusal of the landlord to accept the rent from the second defendant, in response to the landlords' demand made under the statutory notice, would disentitle the landlords to a decree for eviction.

16. In the light of the aforesaid discussion, I am of the opinion that the judgement and decree of the lower appellate court is eminently sustainable and does not require any interference by way of the present revision. This revision is, therefore, dismissed. Rule is discharged with costs.

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